By article XXI the first plaintiff has to assist in obtaining finance in the sum of US$5 million for the defendant's project for developing the hotel and if required to provide security for the said loan. The first plaintiff arranged with the First National City Bank for a loan of US$5 million to the defendant. In accordance with the debenture entered into between the defendant and the First National City Bank the defendant granted to the First National City Bank a first legal mortgage of the whole of its land and buildings not only the hotel premises but also the land and buildings which are excluded from the Management Agreement by way of security. In terms of the said debenture the defendant was required to obtain a guarantee of completion or performance bond in the names of the First National City Bank and the first plaintiff and such guarantee was given. The said debenture and mortgage were fully discharged on March 9, 1973, as the defendant was able to negotiate a more substantial loan from a local bank on more favourable terms and on the security of a first mortgage only.

By article III the hotel was to be constructed in accordance with plans and specifications approved by the first plaintiff and the defendant was to completely furnish and equip the hotel in accordance with a schedule of inventory approved by the first plaintiff.

By article IV the first plaintiff is to operate the hotel as a Holiday Inn and, so far as practicable to do so in accordance with the procedures, practices, management technique and other rules of operation used by the first plaintiff in the operation of its other company-operated Holiday Inns. And the defendant agreed not to interfere or involve itself in any way with the day to day operation of the hotel.

By article V (i) the first plaintiff is to hire, supervise direct the work of and discharge all personnel working in the hotel and the first plaintiff is vested with absolute discretion in the hiring and discharging and supervision and direction of such personnel; (ii) all such personnel including the Innkeeper, are in the sole employ of the defendant and are not in the employ of the first plaintiff; (iii) the defendant will not interfere with or give any orders or instructions to the personnel employed on the premises; (iv) the first plaintiff will be responsible for and shall pay its own employees who are engaged in the performance of duties imposed under the Management Agreement and (v) the first plaintiff will consult and co-ordinate with the defendant on general personnel policies and compensation levels but the first plaintiff has the ultimate discretion to establish its own policies and compensation levels for the hotel.

In my view, taking into consideration the articles that I have set out above, the Management Agreement is not a contract of service nor is it a contract involving personal service and that it is an agreement which the court will specifically enforce.

I am satisfied, having regard to the nature and scope of the Management Agreement and on the affidavit evidence before me that damages would be an inadequate remedy and that the balance of convenience is clearly in favour of the plaintiffs. In my view no injustice would be suffered by the defendant if the interim injunction is granted. Under the Management Agreement the first plaintiff is to manage and operate the hotel for a period of twenty years, unless sooner terminated as provided by the agreement, and the first plaintiff has a right to renew the agreement for three periods of ten years each. The first plaintiff has managed and operated the hotel for only seven months when the defendant purported to terminate the Management Agreement. The balance of justice is in favour of restraining the defendant from managing and operating the hotel under the Management Agreement.

Order accordingly.

Solicitors: *Drew & Napier; Allen & Gledhill.*

SINGAPORE SHUI HING COMPANY (PTE) LTD. v. SINGAPORE SING HUA POEY CHIN ASSOCIATION & ORS.

[O.C.J. (Chua J.) February 17, 1976]

[Singapore — Suit No. 1133 of 1973]

Landlord and Tenant — Rent controlled premises — Whether association competent to hold tenancy — New owner claiming for possession — Defendants alleging that one of their members and not the association was the tenant — Whether member was a tenant by estoppel.

The plaintiff was the owner of a rent controlled premises which it bought from one Madam Tay in 1971. The defendants were occupants of the said premises since 1938. The second, third and fourth defendants were trustees of the association at the commencement of the action. Before the trial of this action, the second defendant, one Lim Eng Peng died and the administrators of his estate were substituted the second defendants.

The plaintiff claimed for possession of the premises and contended that the Association (the first defendant) was not legally competent to hold a tenancy as it was an unincorporated body. The defendants alleged that Lim Eng Peng and not the Association was the tenant of the premises. They argued that Lim Eng Peng was a tenant of the premises by estoppel by virtue of the fact that a Notice to Quit of December 4, 1965 was sent to him by Madam Tay. The issue was whether in the circumstances of the case the defendants were entitled to set up an estoppel.

Held: (1) Lim Eng Peng was by mistake described as a tenant in the notice to quit and when the notice was not acted upon, it was replaced by a fresh notice addressed to the Association;

(2) there was no intention on the part of Madam Tay to induce Lim Eng Peng to believe that she recognized him as the tenant of the premises and Lim Eng Peng had never entertained such belief nor had he acted on this belief to his personal detriment;

(3) the fact that the Association had decided that Lim Eng Peng should be the tenant and hold the tenancy on behalf of the Association was a unilateral act on the part of the Association. This was without the knowledge and consent of Madam Tay and could not have the legal effect of making Lim Eng Peng the tenant of the premises;

(4) judgment must therefore be given for the plaintiffs.

Cases referred to:-

(1) *Indo-Australian Trading Co. Ltd.* v. *Hin An Huay Kuan* [1956] M.L.J. 193.

(2) *Maclaine* v. *Gatty* [1921] 1 A.C. 376.

(3) *Greenwood* v. *Martins Bank* [1933] A.C. 51.

CIVIL SUIT.

Eric Choa (*Kirpal Singh* with him) for the plaintiff.

David Chelliah (*Tan See Suan* with him) for the defendants.

Chua J.: The plaintiff is the owner of the land and premises known as No. 228 Orchard Road, Singapore, (hereinafter referred to as "the premises"), having purchased the property from Madam Tay Chwee Cheng in October 1971.

The premises have been occupied by the Singapore Sing Hua Poey Chin Association (the first defendant and hereinafter referred to as "the Association") since 1938. Lim Eng Peng, Tan Geok Heong and Foo Hong Piat (second, third and fourth defendants) were, at the commencement of this action in June 1973, the trustees of the Association. Before the trial of this action Lim Eng Peng died and the administrators of his estate were substituted the second defendants. The premises are premises to which the Control of Rent Act applies.

The plaintiff's claim is for

" (i) A Declaration that none of them the first, second, third and fourth defendant is or has ever been the plaintiff's tenant in respect of the land and premises known as No. 228 Orchard Road, Singapore.

(ii) Possession of the aforesaid land and premises.

(iii) An injunction restraining the second, third and fourth defendants and the members of the Singapore Sing Hua Poey Chin Association from entering into or remaining on the said land and premises.

(iv) Damages for unlawful occupation of the said premises as from November 1, 1971, until the delivery of possession thereof to the plaintiff."

The contention of the plaintiff is that the Association is not legally competent to hold a tenancy as it is an unincorporated body, (*Indo-Australian Trading Co. Ltd.* v. *Hin An Huay Kuan*).[1]

The defendants concede that the Association is not the tenant of the premises. Their contentions are (1) that Lim Eng Peng was the tenant of the premises by estoppel and (2) that Lim Eng Peng was the tenant in his own right.

The following facts are not in dispute. Lim Eng Peng was elected President of the Association in 1950 and remained President until his death in 1974. The rent receipts for the premises were issued in the name of the Association. In 1953 Madam Tay Chwee Cheng (hereinafter referred to as "Madam Tay") applied to the Rent Conciliation Board to increase the rent of the premises from $90 to $108 per month and in the application the Association was named the respondent. Lim Eng Peng, the President of the Association, and Ong Tai Soon, the Secretary of the Association, saw Madam Tay and they agreed to the proposed increase to $108 p.m. At the hearing of the application before the Board Ong Tai Soon appeared and consented to the application. In 1959 Madam Tay wanted to increase the rent of the premises to $115 p.m. and she wrote to this effect to the Chairman of the Association. Lim Eng Peng went to see Madam Tay and agreed to the increase. On December 4, 1965, Madam Tay served a Notice to Quit (AB 1) on Lim Eng Peng. The notice was addressed to "Mr. Lim Eng Peng c/o 228 Orchard Road, Singapore." No further action was taken by Madam Tay on this notice. However, on March 29, 1966, Madam Tay served a Notice to Quit (Exhibit D2) on the Association and on August 3, 1966, she took out a Writ of Summons (Suit No. 1228 of 1966) against the Association claiming possession of the premises under section 15(1)(d) of the Control of Rent Ordinance on the ground that the Association had been guilty of using or permitting the use of the premises as a common gaming house in contravention of section 4(1)(b) of the Common Gaming House Ordinance, 1961. Madam Tay's action was dismissed with costs on November 14, 1967. In the Writ it was stated that the premises were let by Madam Tay to the Association. On April 1, 1969, Madam Tay commenced an action (Suit No. 680 of 1969) against the Association and Lim Eng Peng seeking a declaration that neither the Association nor Lim Eng Peng "is or ever has been the plaintiff's tenant" in respect of the premises and for possession of the premises. In the Statement of Claim it was stated that the Association had been "in occupation of the said premises under an arrangement permitting the first defendant (the Association) to use the said premises in return for the payment of rent of $115 p.m. but this arrangement has been terminated by notice dated May 21, 1968." It was also stated in the Statement of Claim that Lim Eng Peng "is not and has never been at any material time the tenant of the said premises." In the defence Lim Eng Peng maintained that he was the tenant. After Madam Tay had sold the premises she withdrew the action in April 1973.

The defendants say that Lim Eng Peng was a tenant by estoppel and that it arose in this manner (as set out in the defence):—

(1) Madam Tay issued the Notice to Quit (AB 1) addressed to Lim Eng Peng as her tenant (paragraph 8).

(2) Madam Tay subsequently instituted proceedings in Suit No. 1228 of 1966 against the Association for the recovery of possession which were dismissed on the ground that the action was misconceived, the Association being an unincorporated Association and could not be a tenant at law (paragraph 9).

(3) Madam Tay by letter dated May 21, 1968, purported to terminate an alleged arrangement between the Association and herself for the use of the premises in return for the payment of rent of $115 p.m. (paragraph 10).

(4) The defendants in paragraph 10 of the defence stated that they would "refer to the aforesaid letter (of May 21, 1968) for its full meaning and effect at the trial of this action and will contend that the plaintiffs' predecessor in title (Madam Tay) and the plaintiffs are both estopped from denying that the tenancy is held in the name of the second defendant (Lim Eng Peng) for and on behalf of the members of the Association.

Now the question is whether in the circumstances of this case the defendants are entitled to set up an estoppel.

In *Maclaine* v. *Gatty*,[2] a House of Lords case, Lord Birkenhead L.C. said (at page 386):

"The learned counsel cited various authorities in which these doctrines have been discussed, but the rule of estoppel or bar, as I have always understood it, is capable of extremely simple statement. Where A has by his words or conduct justified B in believing that a certain state of facts exists, and B has

acted upon such belief to his prejudice, A is not permitted to affirm against B that a different state of facts existed at the same time."

In *Greenwood* v. *Martins Bank*,[3] another House of Lords case, Lord Tomlin said (at page 57):

"The essential factors giving rise to an estoppel are I think:—

(1.) A representation or conduct amounting to a representation intended to induce a course of conduct on the part of the person to whom the representation is made.

(2.) An act or omission resulting from the representation, whether actual or by conduct, by the person to whom the representation is made.

(3.) Detriment to such a person as a consequence of the act or omission."

The law of estoppel is clearly stated in *Halsbury's* Laws of England (3rd Edition), Volume 15 page 169 paragraph 338, in these words:

"Where one has either by words or conduct made to another a representation of fact, either with knowledge of its falsehood or with the intention that it should be acted upon, or has so conducted himself that another would, as a reasonable man, understand that a certain representation of fact was intended to be acted on, and that the other has acted on the representation and thereby altered his position to his prejudice, an estoppel arises against the party who made the representation, and he is not allowed to aver that the fact is otherwise than he represented it to be."

For the defendants to succeed on this point they must satisfy the court first, that by her conduct Madam Tay had intentionally induced Lim Eng Peng to believe that he was the tenant of the premises and not the Association and secondly that Lim Eng Peng had acted upon such belief and thereby altered his position to his detriment so that it would be grossly unjust to allow the owner to deny Lim Eng Peng's tenancy.

Before dealing with the evidence I would point out that the defendants were wrong when they stated in their defence that Suit No. 1228 of 1966 was dismissed on the ground that the Association, being an unincorporated Association, could not be a tenant at law. It was dismissed on the ground that the learned trial judge, on the evidence before him, was not satisfied that the Association had been guilty of using or permitting the use of the premises as a common gaming house in contravention of section 4(1)(a) or (b) of the Common Gaming House Ordinance, 1961.

The evidence is that Lim Eng Peng was authorised by the Association to deal with the tenancy matters of the Association and that was the reason why he went to see Madam Tay as regards the application of Madam Tay to the Rent Conciliation Board in 1953 and again in 1959 when Madam Tay wanted to increase the rent of the premises to $115 p.m. Lim Eng Peng went to see Madam Tay as the representative of the Association.

It is argued on behalf of the defendants that the action of Madam Tay in sending the Notice to Quit of December 4, 1965, (AB 1) brings Madam Tay within the law of estoppel. The evidence, however, is that Lim Eng Peng was by mistake described as a tenant in the notice and the notice was not acted upon and three months later this notice was replaced by a fresh notice to quit dated March 29, 1966 (Exhibit D2) addressed to the Association and it was on this notice that Suit No. 1228 of 1966 was founded. There clearly was no intention on the part of Madam Tay to induce Lim Eng Peng to believe that she recognised him as the tenant of the premises. In Suit No. 1228 of 1966 the Association in its defence stated that it was the tenant of the premises. It was Lim Eng Peng who instructed the Association's solicitors that the Association was the tenant of the premises. Lim Eng Peng gave evidence in 1967 in Suit No. 1228 of 1966 and he did not assert that he was the tenant. It was only in 1969 after Madam Tay instituted proceedings in Suit No. 680 of 1969 that Lim Eng Peng in 1970 asserted that he was the tenant.

At the Committee meeting of the Association held on May 12, 1970, Lim Eng Peng reported the Association's solicitors' view of the matter and the meeting thought the best thing to do was to put Lim Eng Peng forward as the tenant. The minutes of the meeting (AB 64) read:

"Whereas the matter between this Association and the landlord has not been settled so far, and the landlord may once again take legal action against the Association, and whereas it is not proper for an association to be a tenant, Mr. Lim Eng Peng is thereby entrusted with this responsibility of the legal responsible tenant for and on behalf of the Association."

The evidence is clear that Madam Tay had never at any time intentionally induced Lim Eng Peng to believe that he was the tenant of the premises. Lim Eng Peng himself had never entertained such belief nor had he acted on this belief to his personal detriment.

As to the point raised on behalf of the defendants that Lim Eng Peng was a tenant of the premises in his own right, I am of the view that there is no substance in this contention.

In paragraphs 12 and 13 of the defence it was pleaded:

"12. About seventeenth (17) months or so before the plaintiffs became owner of the said premises as alleged in paragraph 1 of the Statement of Claim, the defendants at the first Joint Conference of the Executive and Supervisory Committees of the 32nd term of the first defendants held on the 12th day of May 1970 the second defendant was entrusted by the first and other defendants to be the tenant representing the first defendants. The defendants will refer to the minutes of the first defendants recorded at the aforesaid meeting for its full meaning and effect at the trial of this action.

13. The defendants will contend that the tenancy is vested in the second defendant as aforesaid and the second defendant as tenant claims protection under the Control of Rent Act."

The minutes of the meeting of May 12, 1970, is to be found in AB. 64 and 65. The Association decided that Lim Eng Peng should be the tenant and hold the tenancy on behalf of the Association. This unilateral act on the part of the Association without the knowledge and consent of Madam Tay cannot have the legal effect of making Lim Eng Peng the tenant of the premises.

It is submitted that Madam Tay by accepting the arrears of rent from December 1, 1965, to October 31, 1971, had created a tenancy in favour of Lim Eng Peng. What is the evidence? On July 8, 1972, before Madam Tay discontinued Suit No. 680 of 1969 but after she ceased to be the owner, arrears of rent from December 1, 1965, to October 31, 1971, were tendered to Madam Tay by the Association's solicitors with a request that the receipt be issued in the name

of the trustees of the Association. No doubt the request was made on the instruction of Lim Eng Peng. However, the receipt was issued in the name of the Association. Lim Eng Peng himself did not wish to be the tenant.

The plaintiff also claims damages, under two heads, (1) for use and occupation of the premises from November 1, 1971, to delivery of possession at $115 p.m. and (2) General damages.

The plaintiff has not satisfied me that it was in a position to proceed with the development of the property and has not proved that it has suffered any loss which flows directly from the defendants' act in remaining in occupation of the premises.

I however award damages under the first head of claim.

There will, therefore, be judgment for the plaintiff and costs. There will be a declaration in terms of prayer (i) and an order in terms of prayers (ii) and (iii) and for damages.

Claim allowed.

Solicitors: *Oehlers & Choa; Chelliah & Co.*

MALAYSIAN REPORTS

METAL INDUSTRY EMPLOYEES UNION v. REGISTRAR OF TRADE UNIONS & ORS.

[F.C. (Suffian L.P., Lee Hun Hoe C.J. (Borneo) and Ong Hock Sim F.J.) December 22, 1975]

[Kuala Lumpur — Federal Court Civil Appeal No. 80 of 1975]

Administrative Law — Application for declaration that Registrar of Trade Unions is not empowered to rule that certain workmen cannot be members of trade union — Alternative remedies — R.S.C. 1957, O.54A — Trade Unions Ordinance, 1959, ss. 2(2) and 17(4).

Industrial Law — Definition of trade union — Power of Registrar of Trade Union to rule whether certain workmen can be members of trade union — Recognition of trade union — Trade Unions Ordinance, 1959, ss. 2(2) and 17(4) — Industrial Courts Act, 1967, s. 8.

Practice and Procedure — Application for declaration — Whether properly made by originating summons — R.S.C. 1957, O.54A, r.1A.

In this case the appellants sought to represent the workmen of the Selangor Pewter Company Sdn. Bhd. The Registrar of Trade Unions ruled that the workmen of the Selangor Pewter Company Sdn. Bhd. were not engaged in an industry or trade similar to that of workmen represented by the appellants. The appellants sought by way of originating summons certain declarations including a declaration that the Registrar of Trade Unions was not empowered under section 2(2) of the Trade Unions Ordinance, 1959 to rule that the workmen of the Selangor Pewter Co. Sdn. Bhd. could not properly be members of the appellants' union. The learned judge of the High Court dismissed the application (*ante* p. 80) and the appellants appealed to the Federal Court.

Held, dismissing the appeal: (1) the learned judge was right in declining to exercise his discretion to make the declarations as the statutory remedy of appeal better suited the case and would more satisfactorily dispose of the dispute;

(2) (*per* Ong F.J.) this was not a proper case for the exercise of the discretion in favour of the appellant. The application was misconceived and the court had no jurisdiction to grant the declaration;

(3) (*per* Ong F.J.) the declaration sought in this case could in no way be said to fall within the ambit of O.54A r.1A and therefore the procedure of application by originating summons was wrong.

Cases referred to:-

(1) *Manggai* v. *Government of Sarawak & Anor.* [1970] 2 M.L.J. 41, 44 and 45.

(2) *Barraclough* v. *Brown* [1897] A.C. 616, 620.

(3) *Pasmore* v. *The Oswaldtwistle Urban District Council* [1898] A.C. 387, 394.

(4) *Wilkinson* v. *Barking Corporation* [1948] 1 K.B. 721, 724.

(5) *Attorney-General of Malaysia* v. *Chemical Workers Union of Malaya* [1971] 1 M.L.J. 38, 40.

(6) *Pyx Granite Co. Ltd.* v. *Ministry of Housing and Local Government & Anor.* [1958] 1 All E.R. 625; [1959] 3 All E.R. 1; [1960] A.C. 260.

(7) *In re Barnato deceased* [1949] 1 Ch. 21, 27.

(8) *Guaranty Trust Company of New York* v. *Hannay & Company* [1915] 2 K.B. 536, 548-549.

(9) *Rigden* v. *Whitstable Urban District Council* [1958] 3 W.L.R. 205.

(10) *Thomas* v. *Attorney-General* [1937] 1 Ch. 72, 76.

FEDERAL COURT.

D. P. Vijandran for the appellants.

Zaleha binte Zahari (Federal Counsel) for the first and second respondents.